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No. 956

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS, AFL-CIO,

Petitioner,

vs.

WILSON & CO., INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Petitioner is seeking a court order that respondent must arbitrate a decision to contract out certain work. The collective bargaining agreement provides for discussion of grievances "pertaining to matters involved in this agreement or incident to the employment relationship" but for arbitration of only those grievances pertaining to matters "involved in this agreement" as distinguished from matters "incident to the employment relationship." (App. 12-13.) The question is simply the interpretation of this particular submission provision: Is the matter of contracting out work a matter "involved in this agreement" or a matter "incident to the employment relationship"?

ARGUMENT

This is a routine interpretation case turning on its own unique facts.

The arbitration submission provision in defining arbitrable matters distinguishes between subjects specifically referred to in the collective bargaining agreement and subjects to which the agreement speaks, if at all, only because of the overall nature of the relationship it creates between the parties. None of the provisions of the collective bargaining agreement deal with the subject of contracting out work. (App. 8-11.) Petitioner has never contended otherwise. The grievance it filed over the contracting out did not even mention the agreement or any violation thereof. (App. 19.)

It seems unquestionably clear that the matter of contracting out has been specifically excluded from arbitration as pertaining to a matter "incident to the employment relationship" as opposed to a matter "involved in this agreement."[1] The decision of the Court of Appeals so holding

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[1] The submission provision of the collective bargaining agreement between General Electric and the Electrical Workers provides for the arbitration of "[t]he claimed violation of a specific provision . . . of the National Agreement . . ." as distinguished from "claims that an allegedly implied or assumed obligation of this National Agreement has been violated." The BNA Labor Relations Reporter in analyzing this provision states: "An example of an assumed 'indirect or implied purpose' that is *not* subject to arbitration as a matter of right is a claim that subcontracting of plant work while bargaining unit employees are on layoff violates the contract provisions on reductions in force and seniority." 54 L.R.R. 117, 146 (Oct. 7, 1963).

is in accord with the decisions of this Court in the "steelworkers trilogy." In *United Steelworkers* v. *Warrior & Gulf Nav. Co.*, 363 U.S. 574, 582 (1960), this Court expressly recognized that the courts have "the duty of determining whether the reluctant party has breached his promise to arbitrate[,] [f]or arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *Accord, Drake Bakeries, Inc.* v. *Local 50, American Bakery Workers*, 370 U.S. 254, 256 (1962); *Atkinson* v. *Sinclair Ref. Co.*, 370 U.S. 238, 241 (1962).

There is no conflict merely because in *Warrior* a contracting out grievance was found to be arbitrable while here such a grievance was found not to be arbitrable. The submission provision in *Warrior* did not distinguish between matters dealt with expressly and incidentally as does the provision involved here, but encompassed "differences . . . as to the meaning and application of the provisions of this Agreement . . . [and] any local trouble of any kind . . . ." 363 U.S., at 576. In each case, the determination of whether the parties have agreed to submit a particular matter to arbitration must be made on the basis of the particular submission provision before the court. *Compare Drake Bakeries, Inc.* v. *Local 50, American Bakery Workers, supra*, where a claim for damage arising from a strike was held to be arbitrable, *with Atkinson* v. *Sinclair Ref. Co., supra*, where such a claim was held not to be arbitrable. The possibilities of submission are as varied as the particular need and desires of the parties. This case, as do all such cases, turns on its particular facts.[2]

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[2] The above discussion of the asserted conflict with *Warrior* is equally applicable to the asserted conflict with the decisions of other Courts of Appeals.

CONCLUSION

There are no reasons for review by this Court. The petition for certiorari should be denied.

Respectfully submitted,

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